

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on January 15, 2003 at 8 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** Rep. Christopher Harris (D)

**Members Absent:** None.

**Staff Present:** Lisa Swanson, Committee Secretary  
John MacMaster, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 141, 1/8/2003; HB 149, 1/8/2003;  
HB 156, 1/8/2003; HB 161, 1/8/2003  
Executive Action: HB 161; HB149; HB 95; HB 17

**HEARING ON HB 161**

**Sponsor:** REP. GARY MATHEWS, HD 4, Miles City

**Opening Statement by Sponsor:**

REP. MATHEWS opened on HB 161 on behalf of the Department of Corrections (DOC).

**Proponents' Testimony:**

Karen Duncan, Juvenile Community Corrections Bureau Chief, Butte, supported HB 161 stating this bill is basically a clean up bill. She stated its purpose is to clarify the language to ensure juveniles who violate their parole have a hearing or the option to waive it.

***{Tape: 1; Side: A; Approx. Time Counter: 1 - 29}***

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

REP. OLSON closed on HB 161 hoping for a do pass.

***{Tape: 1; Side: A; Approx. Time Counter: 30 - 36}***

**HEARING ON HB 156**

**Sponsor:** REP. GARY MATHEWS, HD 4, Miles City

**Opening Statement by Sponsor:**

REP. MATHEWS opened on HB 156. He stated this bill would eliminate a court's ability to place a youth adjudicated delinquent, for an act that would be a misdemeanor if committed by an adult, in a state youth correctional facility. He emphasized that once a juvenile gets into the system, it is hard for them to get out of the system. He is opposed to putting juveniles that fit the above description in places like Pine Hills.

***{Tape: 1; Side: A; Approx. Time Counter: 37 - 121}***

**Proponents' Testimony:**

**Steve Gibson, Juvenile Probation Officer Division Administrator, DOC,** supported HB 156. He explained this is a state issue regarding the funds of approximately \$6 million allocated to the courts and probation. The cost for one day at Pine Hills is about \$130 a day, but due to construction costs, the present cost is about \$154. It would be more cost-effective to deal with the youths in the community. The intent is to divert any funding for more community placements. He explained that what happens sometimes is that a number of the kids could be charged with felonies and are plead down to misdemeanors. He stated that this takes away accountability and treatment. He gave examples of kids who were discharged from DOC when they needed supervision or treatment. The current law states misdemeanors should not go to a state youth correctional facility unless they are dangerous. He suggested a possible amendment to the bill for multiple misdemeanor offenders.

**Jim Hunter, Supervisor, Pine Hills Youth Correctional Facility,** supported HB 156. He stated that incarceration has severe impacts on the young developing brain. He strongly felt that misdemeanor type acts committed by youths involve much different conduct and they do not need to be removed from the community.

***{Tape: 1; Side: A; Approx. Time Counter: 215 - 244}***

**Anita Roessman, Montana Advocacy Program,** supports HB 156. She advocates on behalf of youths with disabilities and has worked with kids who wound up at Pine Hills or detention. She stated incarceration has a severe impact on the young developing brain. She explained there is so much pressure to put kids some placed and need to be removed from the community. She urged a solution in the future where kids can be cared for and kept in their community.

***{Tape: 1; Side: A; Approx. Time Counter: 246 - 286}***

**Al Davis, Montana Mental Health Association,** supported HB 156 stating this bill will ensure mentally ill youths will not end up incarcerated in a juvenile correctional facility. He strongly believes that the mentally ill are harder to work with but are usually involved in constant misdemeanors. He urged a do pass.

***{Tape: 1; Side: A; Approx. Time Counter: 287 - 315}***

**Opponents' Testimony:**

**Richard Meeker, Chief Probation Officer, Lewis and Clark County,** opposed HB 156. He explained under current law, the court may place a youth with misdemeanor convictions in a youth state correctional facility. He stated this is a rarely used, but important, tool to deal with juveniles who are designated a danger to themselves and/or the public. He stated using Medicaid money for alternative treatment but that requires a diagnosis. He urged the committee to leave this option open for courts to utilize.

***{Tape: 1; Side: A; Approx. Time Counter: 316 - 393}***

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. PARKER** opined to Ms. Koch that an adjudication is not deemed a criminal conviction under the youth court act. Since it is not a criminal conviction, isn't there a problem with a juvenile that commits an act that would be a felony if they were an adult.

**Ms. Koch** stated if a youth committed a third offense of partner family member assault that they could be charged with a felony and be sent to Pine Hills as a felony offender. **REP. PARKER** stated his concern that specific language in the Domestic Violence Statute that elevates a third offense to a felony uses the term, third conviction, and there is specific language in the Youth Court Act that states adjudication is not conviction. **Ms. Koch** stated that is a valid point and that she didn't know how the Supreme Court would rule. She would be amenable to changing the language.

**REP. CLARK** asked **REP. MATHEWS** what program at Pine Hills would help a youth sent to Pine Hills who stole a vehicle. **REP.**

**MATHEWS** stated the purpose of this bill is to prevent a misdemeanor youth from being sent to Pine Hills and spending time with serious juvenile offenders. He stated it is not fight for a misdemeanor youth to go to Pine Hills. **REP. CLARK** asked about options for youths who commit many misdemeanors and what to do.

**REP. MATHEWS** stated there are a lot of options that could be explored besides Pine Hills such as mental health, foster homes, house arrest, project Challenge, and the program in Boulder.

***{Tape: 1; Side: A; Approx. Time Counter: 1 - 46}***

**REP. CLARK** stated to Mr. Meeker that he has intimate knowledge, through his wilderness program, of working with misdemeanor youths. He asked what value Pine Hills would have on youths like

this. **Mr. Meeker** responded three to four placements at Pine Hills a year and those are serious juvenile offenders. He stated that most children are kept in the community with electronic monitoring, house arrest and the Great Falls Detention Center. He emphasized that by the time a youth goes to Pine Hills, probation has worked with them for six months or so. **Mr. Meeker** stated there are drawbacks to Pine Hills but is necessary in some instances. **REP. CLARK** stated his dissatisfaction of a system that says it tried and failed and therefore sends a youth with misdemeanors to Pine Hills.

*{Tape: 1; Side: A; Approx. Time Counter: 47 - 120}*

**REP. CLARK** asked Steve Gibson about the extremely troubled child who never crosses the line to a felony, but who is at risk. He asked about options other than Pine Hills. **Mr. Gibson** stated it is kind of a catch 22 and explained the recidivism rate at Pine Hills for felonies is 5.9 to 11 percent. He stated that once they are in the system, no matter what, it is difficult for them to get out. He gave an example of a 12 year old at Pine Hills, whether they are doing well or not, they will be at Pine Hills until they are 18. There are programs that access parts of Medicaid, but the issue is whether to pay for a kid to go to Pine Hills or to remain in the community. He explained it costs less to keep a youth in the community.

*{Tape: 1; Side: A; Approx. Time Counter: 121 - 211}*

**REP. GUTSCHE** asked Mr. Gibson about Medicaid dollars and how to access the money. **Mr. Gibson** responded there are many ways to access Medicaid money. He stated Chuck Hunter, Department of Public Health and Human Services (DPHHS) has studied how the state can access more Medicaid dollars. **REP. GUTSCHE** stated Missoula has many settings for kids to go which keeps them out of Pine Hills and questioned which other communities have similar programs to Missoula. **Mr. Gibson** responded that Missoula has the best and the most programs but Butte, Helena, Great Falls, and Billings all have alternative settings to Pine Hills.

*{Tape: 1; Side: A; Approx. Time Counter: 212 - 284}*

**REP. NOENNIG** asked Mr. Gibson about other states and their standards. **Mr. Gibson** stated some states do not send misdemeanors, other states do such as Illinois, California do not allow misdemeanors; Alaska and Arizona are looking at a similar bill of diverting money from their facility to deal with keeping kids in the community. **REP. NOENNIG** asked whether the present system is really failing in terms of youths being sent there. **Mr. Gibson** replied that Montana is a Sunday school and the system is

kind of working especially with the money Montana has to work with. **Mr. Gibson** posed the issue is whether it is beneficial to the community to have misdemeanors in alternative settings. He stated that Probation follows existing statute and does what they are supposed to do. He believed HB 156 is perplexing as it could be argued from a care taker position to an accountability and public safety issue. **REP. NOENNIG** posed that maybe the mental health professional part of this bill is the problem. **Mr. Gibson** responded that some of the problem does lie there and that definition needs to be addressed. **REP. FACEY** asked whether this issue affects rural districts more as they do not have the vast array of services. **Mr. Gibson** responded that rural areas have smaller budgets and fewer alternatives and is a factor.

*{Tape: 2; Side: A; Approx. Time Counter: 1 - 7}*

**REP. RICE** stated her concern over the broad definition of mentally ill and the large number of youths who are diagnosed as such. She asked whether how many youths are medicated. **Mr. Gibson** responded that there are three diagnosis: schizophrenia, bipolar, and major depression. He cited 40-50 percent of youths at Pine Hills as being medicated. **REP. RICE** asked whether youths who are released are able to access their medication. **Mr. Gibson** responded that is a major problem if a youth needs to be on medication and cannot access it. **REP. RICE** asked whether youths are being over diagnosed. **Mr. Gibson** responded that can happen and has in the past. Pine Hills and Riverside do provide some mental health to youths if not severe.

*{Tape: 2; Side: A; Approx. Time Counter: 8 - 71}*

**REP. LASZLOFFY** asked whether Pine Hills and Riverside are the only two state correctional facilities for youths. **Mr. Gibsons** stated that is correct affirming that Pine Hills, for boys, houses 140, and Riverside, for girls, houses 120. **REP. LASZLOFFY** asked what percentage of the total placements each year would be affected by this bill. **Mr. Gibson** stated approximately about 10-12 a year for both institutions. He hoped to come to an amendment to deal with the multiple serious and the mental health issues.

**REP. GALLUS** stated he works on a screening committee for a group home and that they look for many criteria. He stated they cannot place a child into a group home that would disrupt the therapy of the other kids or pose a threat to other kids or staff. **REP. LASZLOFFY** asked **Mr. Gibson** about this bell limiting options; that if this bill passes, it takes an option for the courts to use when a child is dangerous cannot be dealt with in the community.

**REP. GALLUS** added that facilities such as Aspen, and Youth Dynamics do exist and would get behind this creating more options to keep the kids in the community.

***{Tape: 2; Side: A; Approx. Time Counter: 82 - 190}***

**Closing by Sponsor:**

**REP. MATHEWS** closed on HB 156 emphasizing that if a juvenile commits a felony, they may be charged with a felony and could be sent to Pine Hills. He commented that misdemeanor kids do not qualify for the chemical dependency or the sex offender programs because the programs are only for felons. He explained that if a juvenile commits a felony, such as sexual intercourse without consent, and they plead it down to sexual assault, they could be placed in the general population at Pine Hills. He stated it now becomes problematic as you have placed a serious sexual offender with misdemeanor kids. The serious offender cannot receive rehabilitation as they are technically not a felon, thus the sex offender program would not be available to this youth. He agreed with many committee members concerns about multiple, highly delinquent, misdemeanors. He emphasized this can be addressed and urged a do pass.

***{Tape: 2; Side: A; Approx. Time Counter: 191 - 236}***

**HEARING ON HB 149**

**Sponsor:** **REP. DONALD HEDGES, HD 97, Antelope**

**Opening Statement by Sponsor:**

**REP. HEDGES** opened on HB 149 stating that this is a clean up bill to provide the courts some discretion on where to hold the parole hearings. He stated the hearings are now held at Deer Lodge and this bill would allow a parole hearing in other destinations.

***{Tape: 2; Side: A; Approx. Time Counter: 237 - 270}***

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**REP. HEDGES** closed on HB 149 urging a do pass.

**{Tape: 2; Side: A; Approx. Time Counter: 271 - 291}**

**HEARING ON HB 141**

**Sponsor:** **REP. MICHAEL LANGE, HD 19, Billings**

**Opening Statement by Sponsor:**

**REP. LANGE** opened on HB 141 stating this bill redefines the criminal conduct, and increases the penalty, of fleeing from or eluding a peace officer. **REP. LANGE** expressed his concerns over the dangers to the public from high speed chases. **REP. LANGE** looked for a model bill to base the language and used a Michigan statute adjusted to fit Montana. He stated the intent of the bill is to decrease the number of high speed pursuits, protect the public, and to send a message to people, kids in particular, that this will be a felony.

**{Tape: 2; Side: A; Approx. Time Counter: 292 - 417}**

**Proponents' Testimony:**

**Officer Mike Guy, Billings Police Department,** supported HB 141, stating the main goal of the bill is safety. He emphasized this bill is to protect the lives of the public, the officers, and the perpetrator.

**EXHIBIT(juh08a01)**

**EXHIBIT(juh08a02)**

**{Tape: 2; Side: A; Approx. Time Counter: 420 - 516}**

**Jim Smith, Montana Sheriff's and Peace Officer's Association,** supported HB 141. He stated the high speed chases do not happen very often, but when they do, they can be very serious. He stated it remains to be seen if this law would be a deterrent and suggested passing the bill to give it a chance.

**Colonel Shawn Driscoll, Montana Highway Patrol,** supported HB 141.

**REP. PARKER, HD 45, Great Falls,** commented that in his experience as a prosecutor, and based on a number of cases, this bill is necessary. He stated that there is often an overlap between a DUI investigations and evading a peace officer. He stated the

current penalties in this area are a joke and urged a do pass.

**{Tape: 2; Side: B; Approx. Time Counter: 62 - 79}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. NOENNIG** asked **REP. LANGE** about the penalties in the Michigan statute. **REP. LANGE** responded the penalties are the same as the language in HB 141. **REP. NOENNIG** expressed concern about some complicated factors regarding any time a person leaves a scene could be a felony. He posed an example of a person who happens on the scene, then leaves the scene. **REP. LANGE** responded he had not considered the last example but that the system has built in protections. He explained that the officer would have to file a report with the prosecutor, then the prosecutor would determine whether to prosecute. **REP. NOENNIG** asked **REP. LANGE** to consider the situation he posed before executive action is taken.

**{Tape: 2; Side: B; Approx. Time Counter: 84 - 158}**

**REP. GALLUS** asked **John McMaster** a question on the fiscal note in which he felt there may be a conflict between the penalty on the fiscal note and the penalty as stated in the proposed bill. **John McMaster** responded that the bill states not to exceed two years where no serious injury or death. The fiscal note states the average incarceration term under current law and it will remain a 10 day average on the current bill. **REP. GALLUS** asked about language in the fiscal note which stated, "For crashes with fatalities, the current penalty is one year and \$5000. This will not change under HB 141." **John McMaster** stated this is the average penalty imposed.

**CHAIRMAN SHOCKLEY** asked **Joe Williams, DOC**, the cost of this bill. **Mr. Williams** stated they figure the average cost of prison (\$18,000 to \$19,000 a year) multiplied by the number of people likely to commit this crime. **REP. SHOCKLEY** asked **Colonel Driscoll** about charging a person who flees as criminal endangerment. He posed whether most county attorneys charge a person with criminal endangerment when it is a dangerous situation. **Colonel Driscoll** responded that is correct.

**{Tape: 2; Side: B; Approx. Time Counter: 159 - 237}**

**Closing by Sponsor:**

**REP. LANGE** closed on HB 141. He stated he would address concerns on the fiscal note. He emphasized the fiscal note sets forth the elements of the crimes and the fines. This bill sends a clear message to the people back home that they care about their safety.

*{Tape: 2; Side: B; Approx. Time Counter: 238 - 272}*

**EXECUTIVE ACTION ON HB 161**

**Motion/Vote:** **REP. GALLUS** moved that **HB 161 DO PASS**. Motion carried unanimously 18-0 voice vote .

*{Tape: 2; Side: B; Approx. Time Counter: 278 - 289}*

**EXECUTIVE ACTION ON HB 149**

**Motion:** **REP. NEWMAN** moved that **HB 149 DO PASS**.

**Discussion:**

**REP. NEWMAN** commented this is not a pork barrel piece of legislation and would greatly assist all interested parties.

**Vote:** Motion carried unanimously 18-0 voice vote.

*{Tape: 2; Side: B; Approx. Time Counter: 290 - 315}*

**EXECUTIVE ACTION ON HB 156**

**Motion:** **REP. RICE** moved **HB 156**.

**Discussion:**

The committee discussed putting youths who commit misdemeanors in youth correctional facilities. **REP. NEWMAN** explained many misdemeanors never become felonies. He stated if youths are dangerous, prosecutors need to charge them up front. He believes HB 156 sends a strong message to the prosecution and to juvenile authorities to stop hedging their bets. **REP. NOENNIG** stated he had some problems with the bill and will oppose it. **REP GALLUS** stated removing the mental health professional will destroy the intent of the bill. **REP. CLARK** stated he has some ambivalence of the bill due to the gap of th either/or with the kids. He believes there are some creative alternatives and the kids should be, and could be, reached before they have 30 misdemeanors. He

also stressed his concern on not moving this bill forward regards the double standard in our society concerning adults who drive drunk. He stressed that kids with a pack of misdemeanors are much less dangerous than adults driving drunk. He stated he will support the bill.

***{Tape: 3; Side: A; Approx. Time Counter: 6 - 157}***

**REP. THOMAS** asked about plea bargaining. **REP. NEWMAN** responded there is a real misconception regarding plea bargains. He stated that Judge Olson once commented that a plea bargain is not much of a bargain as a defendant gives up his right to a trial by jury, the right to present evidence, the right to cross examine witnesses, and basically they give up their right to a defense.

***{Tape: 3; Side: A; Approx. Time Counter: 160 - 222}***

**REP. FACEY** stated he teaches seventh grade science in Missoula. He agreed there is a gap in services. He stated Missoula Youth Homes, is an exception, and they run a tight ship where the kids have to be accountable and it is working.

***{Tape: 3; Side: A; Approx. Time Counter: 223 - 267}***

**REP. NEWMAN** stated his wish to postpone the hearing on this bill due to some problems which he believed could be fixed with some amendments and further discussions.

***{Tape: 3; Side: A; Approx. Time Counter: 268 - 297}***

**Motion/Vote:** **REP. NEWMAN** moved that **HB 156 BE INDEFINITELY POSTPONED**. Motion carried unanimously 18-0 voice vote.

***{Tape: 3; Side: A; Approx. Time Counter: 299 - 303}***

#### **EXECUTIVE ACTION ON HB 77**

**Motion:** **REP. GUTSCHE** moved that **HB 77 DO PASS**.

#### **Discussion:**

**REP. NOENNIG** asked about some amendments Chairman Shockley suggested. John McMaster stated they are not in written form. **REP. CLARK** stated the hearing should be postponed until they are in written form.

***{Tape: 3; Side: A; Approx. Time Counter: 304 - 337}***

**Motion/Vote:** REP. CLARK moved that HB 77 BE INDEFINITELY POSTPONED. Motion carried unanimously without objection.

***{Tape: 3; Side: A; Approx. Time Counter: 338 - 344}***

**EXECUTIVE ACTION ON HB 95**

**Motion:** REP. FACEY moved that HB 95 BE TABLED.

**Discussion:**

REP. PARKER stated he was informed by DOC that the most likely underlying offenses for medical parole are felony incest, felony sexual intercourse without consent and felony arson. He stated his concern of having a person out in society who has nothing to lose and cannot support this bill.

***{Tape: 3; Side: A; Approx. Time Counter: 345 - 369}***

REP. GUTSCHE stated this bill involves huge policy concerns and needs much further discussion. She emphasized there are folks in prison who are terminally or chronically medically ill in need of medical care they are not getting in prison. She stated her desire that if this bill is tabled, she wishes to have it untable to discuss further.

***{Tape: 3; Side: A; Approx. Time Counter: 370 - 392}***

REP. FACEY stated Liz Rantz, Medical Director, MSP testified she would always have a discharge plan before releasing an inmate on medical parole. REP. FACEY expressed his concern that discharge plans are not statutorily required. He stated his concern that people could be released without a discharge plan since it is not in the bill. He stated his motion to table is lightly.

***{Tape: 3; Side: A; Approx. Time Counter: 393 - 423}***

**Vote:** Motion to table carried 17-1 roll call vote with REP. GUTSCHE voting no.

***{Tape: 3; Side: A; Approx. Time Counter: 424 - 438}***

**EXECUTIVE ACTION ON HB 17**

**Motion:** REP. GUTSCHE moved that HB 17 DO PASS.

***{Tape: 3; Side: A; Approx. Time Counter: 438 - 501}***

**Discussion:**

**John McMaster** and the committee discussed some amendments which **REP. RASER** and **REP. NOENNIG** proposed. **REP. CLARK** stated there are two amendments proposed on the bill and committee would deal with the "Noennig" amendments first.

*{Tape: 3; Side: B; Approx. Time Counter: 1 - 3}*

**Motion:** **REP. NOENNIG** moved that **HB 17 BE AMENDED.**

*{Tape: 3; Side: B; Approx. Time Counter: 4 - 5}*

**Discussion:**

**REP. NOENNIG** stated his amendments concern jointly owned interests where, for example, someone takes advantage of an older person in a jointly owned bank account. He stated other situations that have occurred where one party becomes incapacitated in some way and the other joint owner takes advantage of that. **Mr. McMaster** stated the amendments would cover jointly owned interests.

*{Tape: 3; Side: B; Approx. Time Counter: 7 - 54}*

**REP. NEWMAN** considered **REP. NOENNIG'S** amendment as friendly and he supported it. **REP. STOKER** asked about joint accounts and situations such as a checking account. **REP. NEWMAN** explained the amendments would help prevent a "bad actor" from destroying another's interest in the property. **REP. NOENNIG** commented that he opened a can of worms as joint tenancy is not covered in this bill. He stated a tenancy in common is covered by many rules on how the interests flow. He stated the statute comes into play if a criminal act is suspected. He posed it would be a matter of proof whether the person took the assets, and did so with a criminal intent. **REP. LANGE** considered this a friendly amendment. **REP. RICE** stated her concern this bill is overly broad and it opens a can of worms. **REP. NOENNIG** stated this amendment would only deal with the case where one criminal intends to steal another's property. **REP. PARKER** responded that a criminal case requires proof beyond a reasonable doubt and the protection is there.

*{Tape: 3; Side: B; Approx. Time Counter: 55 - 199}*

**Vote:** Motion carried 17-1 voice vote with **RICE** voting no.

**Motion:** **REP. NOENNIG** moved that **HB 17 DO PASS AS AMENDED.**

**Motion:** REP. RASER moved that HB 17 BE FURTHER AMENDED.

***{Tape: 3; Side: B; Approx. Time Counter: 206 - 208}***

**Discussion:**

REP. RASER moved an amendment based off of Anita Roessman's testimony regarding developmentally disabled persons. She stated her amendment would change the language of the bill to reflect similar language which is currently in SB 124. REP. NOENNIG asked REP. RASER about the reason for language on abuse and neglect. REP. RASER stated that this is a special population that does not have the same protections as normal people. She explained these people are often in institutions, unable to leave at will, more vulnerable, and therefore in need of protection. REP. RICE stated her experience has been that many elderly people in homes have dementia and often believe someone is trying to harm them. She believes that many people have been falsely accused and she must oppose the bill.

***{Tape: 3; Side: B; Approx. Time Counter: 210 - 282}***

REP. LANGE asked REP. NEWMAN about the penalties of sexual abuse of a person in an institution. REP. NEWMAN responded that there are a number of sexual offenses in the code. He stated a sexual assault of one adult against another is a misdemeanor, whereas sexual intercourse without consent, or rape, is a felony. Sexual assault is defined as sexual contact. REP. LANGE stated this bill would give a broader range to the penalty. REP. NEWMAN stated that is true that REP. RASER'S amendment would make assault of a disabled or elderly person a felony in all cases with a zero- to ten-year penalty. REP. LANGE posed the problem of disparity in sentencing. REP. NEWMAN responded that is a loaded question beyond the bill. He stated there are no sentencing guidelines in the state courts and sentencing disparity can and does exist.

***{Tape: 3; Side: B; Approx. Time Counter: 283 - 365}***

REP. RASER responded to REP. RICE'S comment about people being falsely accused, and whether a person would be charged by an elderly person's mere accusation. REP. NEWMAN responded there would need to be some objective proof of exploitation or abuse.

***{Tape: 3; Side: A; Approx. Time Counter: 366 - 384}***

REP. FACEY supported the amendment. He believed the disabled and elderly should be protected. REP. CLARK asked about penalties of

one who abuses or assaults a child or an older person. **REP. NEWMAN** stated it is a maximum 10 years, a felony, in the Elder and Disabled Persons Exploitation Act, 52-3-825. He explained the "Raser" amendment poses whether the sexual abuse of the disabled or the elderly be increased.

**Vote: Motion (on Raser's amendment) carried 10-7 with EVERETT, LASZLOFFY, MALCOLM, NOENNIG, RICE, SALES, and STOKER voting no.**

**Motion/Vote: REP. FACEY moved that HB 17 DO PASS AS AMENDED. Motion carried 14-4 roll call vote with LASZLOFFY, RICE, SALES, and STOKER voting no.**

***{Tape: 4; Side: A; Approx. Time Counter: 1 - 140}***

**ADJOURNMENT**

Adjournment: 12 P.M.

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REP. JIM SHOCKLEY, Chairman

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LISA SWANSON, Secretary

JS/LS

**EXHIBIT** (juh08aad)